

**NC Department of Insurance
Office of State Fire Marshal, Engineering Division**

RE: Appeal of the NCDOI Formal)
 Interpretation by Chief Code) NCDOI DECISION
 Consultant Barry Gupton, dated)
 April 2, 2015

In accordance with GS 143-140, Gregory Wills representing the contractor Bernie Mancuso and the owner Elizabeth Letendre has appealed the occupancy classification identified in Mr. Gupton's interpretation.

GS 153A-374 requires the NC Department of Insurance, Office of State Fire Marshal, Engineering Division to review appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws.

PARTIES

Appellant: Gregory Wills
 Attorney for Owner Letendre and Builder Mancuso
 6541 Caratoke Highway
 Grandy, NC 27939

Appellee: NC Office of State Fire Marshal
 Barry Gupton
 1202 Mail Service Center
 Raleigh, NC 27699-1202

BACKGROUND

The following factual background is based on documents provided with the appeal and communications with the parties:

The building in question is located at 1441 Ocean Pearl Road, Corolla, NC, also referred to the Letendre Project and Lot 8, Ocean Beach Subdivision. The building is constructed with 24 bedrooms, 26 bathrooms and a Gazebo that is 4526 square feet. Mr. Gupton's letter identifies the occupancy classification based on the information available to him, which showed that the property would be used as wedding venue with overnight occupancy with multiple unrelated persons. Mr. Gupton ruled that the building would not meet the definition of a One- or Two-family dwelling.

The building code contains occupancy classifications that regulate construction based on the risk associated with the building. In the case of Mr. Gupton's letter, he identified that One- or Two-Family Dwelling could be constructed with 24 bedrooms. However, when more than 5 unrelated persons occupy the structure, the building did not meet the definition of a "family" and needed to be built to accommodate the risk associated with transient occupants such as a hotel (Group R-1). A number of documents identified that the intended use of the building was as a wedding venue with approximately 48 transient, unrelated persons staying overnight.

Currituck County issued a permit for a One- or Two-Family Dwelling with the conditions that the structure must include the safety measures found in a hotel. The approach was given as an alternative method addressed in Section 105.1 of the 2012 NC Administrative Code and Policies.

Based on the permit document addressing the alternative construction dated February 15, 2015, the Currituck County permit was granted using the safety features associated with a Group R-1 hotel occupancy and based on conversations with Mr. Wills, construction has started in accordance with that permit.

ISSUES RAISED IN APPEAL

The following issues are raised in Appellant Gregory Wills appeal:

1. What is the occupancy classification for the Letendre Project?
2. Did the builder and owner agree with Currituck County on the alternative design method addressed in the Currituck County permit?

FINDINGS

1. Section 101 of the 2012 NC Administration Code and Policies contains the scope of the applicable code to each building. The applicable sections of Section 101 are as follows:

101.3.2.1 North Carolina Building Code. The provisions of the Building Code shall apply to the construction, alteration, repair, equipment, use and occupancy, location, movement to another site, removal and demolition, or any appurtenances connected or attached to every building or structure, other than one- or two-family dwellings and townhouses.

101.3.2.11 North Carolina Residential Code. The provisions of the Residential Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures.

2. The scope of the 2012 NC Residential Code is contained in Section R101.2 that reads as follows:

R101.2 Scope. The provisions of the *North Carolina Residential Code for One- and Two-family Dwellings* shall apply to the construction, *alteration*, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses not more than three stories above *grade plane* in height with a separate means of egress and their *accessory buildings and structures*.

3. The term "Family" is defined in Chapter 2 of the 2012 Residential Code that reads as follows:

FAMILY. Family is an individual, two or more persons related by blood, marriage or law, or a group of not more than any five persons living together in a dwelling unit. Servants having common housekeeping facilities with a family consisting of an individual, or more persons related by blood, marriage or law, are a part of the family for this code.

4. The scope of the 2012 NC Building Code is defined in Section 101 as follows:

101.2 Scope. The provisions of this code shall apply to the construction, *alteration*, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exceptions:

1. Detached one- and two-family *dwellings* and multiple single-family *dwellings (townhouses)* not more than three *stories* above *grade plane* in height with a separate *means of egress* and their accessory structures shall comply with the *International Residential Code*.
2. (...)

5. The 2012 NC Building Code assigns risk to buildings based on the intended use. The applicable provisions are as follows:

303.1 Assembly Group A. Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption or awaiting transportation.

Exceptions:

1. (...)
2. A room or space used for assembly purposes with an *occupant load* of less than 50 persons and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.
3. (...)

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *International Residential Code* in accordance with Section 101.2. Residential occupancies shall include the following:

R-1 Residential occupancies containing *sleeping units* where the occupants are primarily transient in nature, including:

Boarding houses (transient)

Hotels (transient)

Motels (transient)

Congregate living facilities (transient) with 10 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

[...]

310.2 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

TRANSIENT. Occupancy of a *dwelling unit* or *sleeping unit* for not more than 30 days.

CONCLUSIONS

Based on the forgoing findings and the documents submitted, the following conclusions are made:

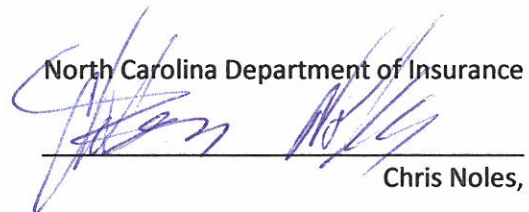
1. From the documents submitted, the building is intended to be used as a wedding venue/hotel where up to 48 people will be residing for less than 30 days.
2. Based on the definition for a family in the 2012 NC Residential Code, a building constructed for the 48 unrelated persons could not be classified as a one or two family dwelling and would be required to be constructed in accordance with the NC Building Code.
3. Based on the transient nature of the occupants, the occupancy classification would be Group R-1 in accordance with the 2012 NC Building Code.
4. The owner and builder accepted the permit as issued and have begun building in accordance with the permit.
5. By this appeal, the owner and builder seek to rescind the permit they agreed upon with Currituck County.

APPEAL DECISION

With respect to Mr. Gupton's interpretation, his opinion was accurate and there is no reason to overturn his interpretation. By reason of the owner and builder agreeing to the terms of the permit, the permit as issued should remain in full effect.

This 28th day of May, 2015.

North Carolina Department of Insurance



Chris Noles,

Deputy Commissioner

FURTHER APPEAL RIGHTS

You have the right to appeal this decision to the NC Building Code Council. Please refer to N.C.G.S. § 143-141 and NC Administrative Code and Policies § 202.9.2 for further appeal rights. You have 30 days in which to appeal this decision.

cc:

David Boone Special Deputy Attorney General, NCBC

Bill Newns

Ben Woody

Mike and Marie Long

OVERTURNED